IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2649 OF 2006

Aziz-Ur-Rahman .. Petitioner

Vs.

Smt. Sucheta Subhash Virkar and anr. .. Respondents

Mr. P.S. Dani with Mr. D.J. Lulia for petitioner.
Mr. Ashutosh Khandeparkar & A.M. Legal for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : June 06, 2006.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioner.

2. Rule. Respondents waive service.

3. It is noticed that the trial court framed four issues on 16/3/2004 and two more additional issues on 25/10/2004. Issue No.6(b) is framed regarding the jurisdiction of the court to entertain the suit. It is stated that the petitioner-plaintiff was under cross-examination when the impugned order dated 1/4/2006 came to be passed and he has no other

witnesses to examine. The defendants' evidence has yet to start.

4. It will be, therefore, appropriate for the trial court to decide issue No.6(b) as the preliminary issue regarding pecuniary jurisdiction to entertain the suit after the parties complete their evidence and it will not be proper for the trial court at this stage to hear the parties on the preliminary issue more so having regards to the provisions of Order 7 Rule 10 and 10A as well as Order 14 Rule 2 of C.P.C.

5. The trial court is, therefore, directed to proceed with recording of the evidence and hear and decide issue no.6(b) as the preliminary issue. If the said issue is answered against the plaintiff, it would not be necessary to decide the other issues.

6. The petition is disposed off in terms of the above directions.

(B.H. Marlapalle,J.)